FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 27/11/2017

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71632-71633/2017-SM[BR] dated 24/11/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
,	E/70533/2017	**Vishal Pipes Limited** A-71,industrial Area,sikandrabad BULANDSHAHAR UP
,	E/70534/2017	**Vishal Pipes Limited** A-71,industrial Area,sikandrabad BULANDSHAHAR UP

Name and Address of Respondent

C E & ST-Noida Ii
OFFICE OF THE COMMISSIONER
CENTRAL EXCISEHOTEL FORMULE I,
WEGMANS BUSINESS PARK, KP-III,
GREATER NOIDA
GOTAM BUDH NAGAR
U.P.-

C E & ST-Noida Ii
OFFICE OF THE COMMISSIONER
CENTRAL EXCISEHOTEL FORMULE I,
WEGMANS BUSINESS PARK, KP-III,
GREATER NOIDA
GOTAM BUDH NAGAR
U.P.-

Other Appellants and Respondents as per Annexure

Copy To

5 Bar Association, CESTAT, Allahabad

6 Director Publications, Customs, Excise. I.P. Estate, Delhi

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

15 C.D.R. 16 Office Copy 17 Second Folder Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Ex.Appeal Nos.70533,70534/17

Arising out of O/A No.NOI-EXCUS-002-APP-0029-30-17-18 dated 04.05.2017 passed by Commr (A) of Central Excise & Customs, Noida.

M/s Vishal Pipes Ltd.

...APPELLANT(S)

VERSUS

Commr. of Central Excise, Customs & S.Tax, Noida II

RESPONDENT (S)

APPEARANCE

Ms.Pratiksha Singh, Authorised Representative for the Appellant (s)
Shri Gyanendra Kr. Tripathi, Asstt. Commr. (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE JUDICIAL MEMBER

DATE OF HEARING : 14. 11. 2017
DATE OF PRONOUNCEMENT :

Final ORDER NO. 71632 - 71633/2017

Per Mrs.Archana Wadhwa :

As per facts on record, the appellants are engaged in the manufacture of Steel Tubes & Pipes, structural Pipes and rigid PVC Pipes chargeable to duty under Chapter 73 of the Central Excise Tariff Act, 1985 and were availing the cenvat credit on various input services and capital goods used in the manufacture of their final product.

2. Apart from the manufacturing goods on their own, the appellantwas doing job work with the principal manufacturer. Revenue by entertaining a view that the manufacture of the goods on job work basis amounts to providing services, which were exempted from

payment of service tax and the appellant was not entitled to cenvat credit of service tax paid on common inputs and common services, raised the demand at the rate of 6% of the job charges in terms of the provisions of Rule 6 (3) (1) (i) of Cenvat Credit Rules, 2004. A demand so raised by invoking longer period of limitation was confirmed. The said confirmation was upheld by the Commissioner (Appeals) . Hence the present appeal.

3. After hearing both sides, I find that admittedly the appellant was doing job work in their ~~two~~ manufacturing units and were clearing the goods to the principal manufacturer without payment of duty. The principal manufacturer was paying duty on their final product, which included the job work manufactured goods. The Larger Bench of the Tribunal in the case of Sterlite Industries (I) Ltd. Vs. CCEx. Pune reported in 2005 (183) ELT 353 (Tri.LB.), has observed that the goods manufactured on job work basis, cannot be considered to be exempted goods inasmuch as the same are sent back to the principal manufacturer, who undertakes to pay the duty in respect of the same. The said decision stands followed by the Tribunal in a number of judgements. Reference can be made to the decisions of the Tribunal in the cases of (i) JBF Industries Vs. Commr. of Central Excise & S.Tat, Vapi : 2014 (34) STR 345 (Tri.-Ahmd.) & (ii) Alkyl Amines Chemicals Ltd. Vs. 2015 (40) STR 757 (Tri.Mumbai). Further, a reference can be made to the decision of the Tribunal in the case of New Era Handling Agency Vs. Commissioner : 2015 (37) STR 344 (Tri.Mumbai). The said decision of the Tribunal stands confirmed by the Hon'ble

Supreme Court in the case of Commissioner Vs. New Era Handling Agency reported in 2016 (44) STR J278 (S.C.). It was held that the packing of fertilizer is a manufacturing activity and does not fall under service industries As reported in the case of Alkyl Amines Chemicals Ltd. referred (supra). It was again observed that the activity of conversion, amounts to manufacturer and ~~availed~~ falls outside the purview of business auxiliary service and demand in terms of Rule 6 is not sustainable.

4. Inasmuch as the issue stands decided, I find no justifiable reason to uphold the impugned order of the authorities below. Accordingly, the same are set aside and both the appeals are allowed with consequential relief.

Pronounced in the open Court on 24/11/17

Sd/-
(Archana Wadhawa)
Member(Judicial)

mm

प्रमाणित प्रति/Certified True Copy
15/12/17
सहायक रजिस्ट्रार/Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001